



Electricity Supply Board  
Bord Soláthair An Leictreachais

## REGULATORY AFFAIRS

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30<sup>th</sup> March, 2007.

Ms. Donna Hamill,  
Ofreg,  
Queens House,  
14 Queen Street,  
Belfast  
BT1 6ED.

### **RE: Proposed Conditions of Market Operator Licences**

#### **Second Consultation Paper**

**Reference: AIP/SEM/07/17**

Dear Ms. Hamill,

I attach as requested ESB's comments on the second draft of the above licences and the accompanying Consultation Paper. We are grateful for this opportunity to comment on this draft and for the consideration given by the RA's to comments made during the first consultation.

We note that while drafting of the licences is substantially complete there are still areas that require further clarification (see comments attached) and some which require completion e.g. Condition 20 Charging and Revenue Restriction.

#### **Issues from the Consultation Document**

##### **1. Structure of the MO**

The practicalities of the operation of the Contractual Joint Venture were raised in the first consultation and have not been adequately addressed in the second paper (2.3 second para refers). This lack of clarity adds to the view that the SMO activity is not being carried out by a "single" entity. For example:

- Where is the business located/registered?
- Will there be a single point of contact?
- Will the employees be employed by the JV?
- Will the JV have its own Bank Accounts etc

The efficient functioning of the SEM would be enhanced if participants are given more detailed information on structure and proposed organisation of the activity. We request that a full description of the CJV be published for comment before the final license is issued

The dividend condition in the SONI licence was also raised but not explicitly addressed in the second consultation paper. We request that you address this matter in the response to the second consultation.

We note Condition 2 of the draft EirGrid MO license and Condition 14 of the draft SONI MO license provide for a dispute resolution mechanism where there is a change to the MOA that is not agreed. However, it is not clear that disputes will be dealt with by the joint regulatory authority. The licences should be explicitly drafted to reflect the actual mechanisms to be followed for both CER and NIAER to issue a binding determination.

## **2. Performance of the MO**

We welcome the RA's acceptance of the views of respondents to the first consultation paper that a more objective process for the setting of performance criteria for the MO is required. However, the current drafting of the relevant Conditions (Condition 10 of EirGrid draft license and Condition 17 of the SONI draft license) does not support the RA's stated desire for transparency. The Conditions should be worded: (a) to be mirror images of each other; (b) explicitly require public consultation on the initial performance criteria proposed to the RA's for approval; and (c) explicitly require consultation on any subsequent changes/amendments to the criteria prior to approval by the RA's. The licenses should also explicitly require, not implicitly suggest, that the Performance Reports of the MO's will be consulted upon by the RAs.

We note that the second consultation paper does not comment on the proposal for independent audits of the MOs' processes and activities to be carried out and their subsequent publication. This is a best practice issue and should be included in the licenses.

## **3. Other Issues**

- Condition 12 of the draft SONI MO licence has not been amended to remove the distribution activity as stated in the Consultation Paper.

- Condition 10(b) of the draft SONI MO licence and Condition 16 of the EirGrid license refers. Is there any prohibition on the management or staff of the MO activity holding or acquiring shares in a holding company of the licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland? We are of the view that material shareholdings should be prohibited.
- Condition 10(13) of the draft SONI MO license refers. We propose that the Compliance Manager also report on staff movements into and out of the MO activity/CJV during the previous 12 month period to/from an Associated business.

We would like to thank you for the opportunity to input to the consultation process and look forward to further consultation on the issue of charging and revenue restriction.

Yours sincerely,

Marie Sinnott  
Manager, Group Regulatory Compliance.